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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/594,708	04/24/2008	T. Randall Lee	96605/28US	9487
23873 7590 04/13/2012 ROBERT W STROZIER, P.L.L.C PO BOX 429 BELLAIRE, TX 77402-0429				
EXAMINER				
CABRAL, ROBERT S				
ART UNIT		PAPER NUMBER		
1618				
MAIL DATE		DELIVERY MODE		
04/13/2012		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/594,708 Examiner ROBERT CABRAL	Applicant(s) LEE ET AL. Art Unit 1618
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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 March 2012 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

NO NOTICE OF APPEAL FILED

1. ☒ The reply was filed after a final rejection. No Notice of Appeal has been filed. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114 if this is a utility or plant application. Note that RCEs are not permitted in design applications. The reply must be filed within one of the following time periods:

a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action; or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

c) ☐ A prior Advisory Action was mailed more than 3 months after the mailing date of the final rejection in response to a first after-final reply filed within 2 months of the mailing date of the final rejection. The current period for reply expires _____ months from the mailing date of the prior Advisory Action or SIX MONTHS from the mailing date of the final rejection, whichever is earlier.

Examiner Note: If box 1 is checked, check either box (a), (b) or (c). ONLY CHECK BOX (b) WHEN THIS ADVISORY ACTION IS THE FIRST RESPONSE TO APPLICANT'S FIRST AFTER-FINAL REPLY WHICH WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. ONLY CHECK BOX (c) IN THE LIMITED SITUATION SET FORTH UNDER BOX (c). See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) or (c) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendments filed after a final rejection, but prior to the date of filing a brief, will not be entered because:

a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);

b) ☐ They raise the issue of new matter (see NOTE below);

c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): (a) ☒ will not be entered, or (b) ☐ will be entered, and an explanation of how the new or amended claims would be rejected is provided below or appended.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing the Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____

STATUS OF CLAIMS

14. The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: _____

Claim(s) withdrawn from consideration: _____

/Maria Leavitt/ Primary Examiner, Art Unit 1633	/Robert Cabral/ Examiner, Art Unit 1618
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Continuation of 3. NOTE: Applicants have amended claim 1 to limit the scope of the claimed composition and added claims 49-67. New claim 52, for example, which depends from claim 1 recites "wherein the nano-structure has a plasmon resonance". None of the claims previously examined recited "wherein the nano-structure has a plasmon resonance". This limitation was not previously examined requiring new search and consideration of the art made of record, and of the specification for support of the amendment. Additionally, new claims 49, 50, 51 and 53-67 were not previously examined requiring new search and consideration of the art made of record, and of the specification for support of the amendment.

Continuation of 11. does NOT place the application in condition for allowance because: The examiner maintains the rejection of claims 1, 31-39 under 35 U.S.C. 102(a) and (e) as being anticipated by West et al. (WO 01/05586), for the reasons of record. Additionally, claim 35 remains objected to under 37 CFR 1.75 as being a substantial duplicate of claim 34. Applicant rebuts the rejection of the claims under 35 U.S.C. 102(a) and (e), in the reply filed on 03-28-2012, by essentially stating that West et al., does not teach the nanostructure deposited on a conductive core, where the nanostructure such as gold sulfide is conductive as evidenced by the teachings of Ishikawa et al. In fact Applicants argue that the teachings of Ishikawa et al expressly contradict the teachings of West. That is that Au₂S is a dielectric. As previously stated at page 3 of the action filed on 12/29/2011, gold sulfide is known to exhibit electrical conductivity in the range of 150-370 K. See Introduction to Ishikawa et al., "Structure and electrical properties of Au₂S," Solid State Ionics 79 (1995) 60-66 ("Generally, whether a material is an ionic conductor with high conductivity or not is strongly related to its crystal structure. On this basis the sulfide Au₂S could be a gold ion conductor."). Note that the office reliance on secondary evidence, such as other patents or publications, can be cited to show public possession of the method of making and/or using and is not improper as Applicant attempts to imply. See MPEP 2131.01..